

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re:)	Case No. 10-51004
)	
)	Chapter 13
Roderick Jones)	
)	Judge: C. Kathryn Preston
Debtor)	
)	

**MOTION TO AVOID AND STRIP THE UNSECURED
SECOND MORTGAGE OF HSBC MORTGAGE SERVICES, INC.**

Now comes Roderick Jones, Debtor, and respectfully requests this Court to issue an Order to avoid and strip the second mortgage lien of HSBC Mortgage Services, Inc. (hereinafter "HSBC") pursuant to 11 U.S.C. § 506(a), 11 U.S.C. § 1322(b)(2) and 11 U.S.C. § 1327(a), (b) and (c), as made applicable to this case via 11 U.S.C. § 506(a), and that the lien be released and cancelled of record. Debtor makes this request on the basis that a secured first mortgage lien on the subject real estate exceeds the value of that property and there is no equity to secure HSBC's second mortgage lien, as more fully set forth in the Memorandum in Support, below.

Respectfully submitted,

/s/ Erin E. Schrader

Erin E. Schrader (0078078)
Rauser and Associates
5 East Long Street Suite 300
Columbus, OH 43215
Telephone: (614) 228-4480
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MEMORANDUM IN SUPPORT

Debtor, Roderick Jones (hereinafter “Debtor”), filed for relief under Chapter 13 on February 1, 2010. At the time of filing the petition, the Debtor was the owner of real estate located at 2214 Medina Ave. Columbus, OH 43211 with a fair market value of \$52, 400 according to the filed appraisal (Doc. #19). HSBC has not filed an objection to the Debtor’s proposed Chapter 13 plan, nor contended the valuation of the real estate.

Debtor executed a note and mortgage in favor of HSBC for a first mortgage on the residence. Debtor owes \$75,562 to HSBC on their first mortgage. Subsequently, Debtor executed a second note and mortgage also in favor of HSBC . Debtor owed HSBC \$19,677.84 on the second mortgage claim. HSBC’s second mortgage lien is junior to the first mortgage lien, which is also held by HSBC

The amount due on the first mortgage lien held by HSBC exceeds the undisputed value of the subject real estate. Therefore, there is insufficient equity in the subject real estate to secure HSBC’s second mortgage lien. The second mortgage lien of HSBC should be deemed to be unsecured pursuant to 11 U.S.C. § 506(a). See *In Re Lane*, (6th Cir. 2002), 280 F.3d 663, 664. Pursuant to *Lane*, the Chapter 13 plan may modify the rights of holders of second mortgage liens secured by Debtor’s residence when the amount due on the first mortgage exceeds the value of the subject real estate. Furthermore, the strip down and avoidance of a mortgage through a chapter 13 proceeding can be accomplished without an adversary. See *In re Sanders*, 202 B.R. 986, 988-91 (Bankr. D. Neb. 1996), In *Vaillancourt v. Marlow* (In re Vailancourt), 197 B.R. 464 (Bankr. M.D. Pa. 1996), *Castellanos v. PNC Bank* (In re Castellanos), 179 B.R. 393, 395 (Bankr. M.D. Pa 1994), *In re Woodhouse*, 172 B.R. , 2-3 (Bankr. D.R.I 1994).

HSBC has not disputed the appraised value of the real estate in this case, and made no

objection to the confirmation of the Chapter 13 plan regarding the treatment of the second mortgage lien. HSBC had the opportunity to challenge the value and treatment of the second mortgage as unsecured, but opted not to do so.

WHEREFORE, Debtor prays that this court enter an Order deeming the second mortgage claim of HSBC to be wholly unsecured. Debtor request the Court issue an order avoiding HSBC's wholly unsecured second mortgage lien against the Debtor's real estate effective at the successful completion of Debtor's Chapter 13 Plan and for such other relief that the Court deems appropriate in this matter.

Respectfully Submitted,

/s/ Erin E. Schrader
Erin E. Schrader (0078078)
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5 East Long Street Suite 300
Columbus, OH 43215
614-228-4480

**Form 20A NOTICE OF FILING OF A MOTION TO AVOID AND STRIP THE
UNSECURED SECOND MORTGAGE HELD BY HSBC MORTGAGE SERVICES, INC.**

The Debtor(s) has/have filed papers with this Court requesting the relief sought in the Motion enclosed with the NOTICE.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have on in the bankruptcy case. (If you do not have an attorney, you may wish to consult on.)

If you do not want the Court to GRANT the relief requested in the enclosed MOTION, or If you want the Court to consider your views on the MOTION, then on or before **21 Days from the date of filing**, you or your attorney must:

1. File with the Court, a written response to the MOTION expressing your objection or viewpoint. The response is to be filed with the Clerk of Courts at 170 N. High St. Columbus, Ohio 43215.

If you mail your written response to the Court for filing by the Clerk, you must mail it early enough so the Court will **receive** it on or before the date stated above.

2. You must also mail a copy of the written response to **Rauser & Associates, 5 East Long Street, Suite 300, Columbus, OH 43215.**
3. You must also mail a copy of the written response to the Debtor(s) at the address listed on the front of this paper entitled Certificate Of Service.
4. Finally, you must attend any Court hearing scheduled to consider this MOTION. The Court will likely schedule an oral hearing and serve only those parties who have in fact filed a written response.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the MOTION and may enter an order granting that relief.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this January 10, 2011, upon the following:

By Electronic Mail:

Chapter 13 Trustee:

Frank M. Pees
130 East Wilson Bridge
Suite 200
Worthington, Ohio 43085

US Trustee:

170 N. High Street
Columbus, OH 43215

By Regular U.S. Mail:

Debtor:

Roderick Jones
2214 Medina Ave.
Columbus, OH 43211

Creditors:

HSBC Mortgage Services, Inc. servicer for Decision One Mortgage Company, LLC, LTD
636 Grand Regency Blvd.
Brandon, FL 33509

Respectfully Submitted,

/s/ Erin E. Schrader
Erin E. Schrader (0078078)